

LSU Journal of Energy Law and Resources

Volume 6
Issue 1 *Fall 2017*

3-23-2018

A Tribe Faces Rising Tides: The Resettlement of Isle de Jean Charles

Madaline King

Repository Citation

Madaline King, *A Tribe Faces Rising Tides: The Resettlement of Isle de Jean Charles*, 6 LSU J. of Energy L. & Resources (2018)

Available at: <https://digitalcommons.law.lsu.edu/jelr/vol6/iss1/13>

This Comment is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in LSU Journal of Energy Law and Resources by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

A Tribe Faces Rising Tides: The Resettlement of Isle de Jean Charles

INTRODUCTION

Violet Handon Parfait is a wife and mother doing her best to provide for her family in deteriorating circumstances.¹ She, her husband, and her two children live on Isle de Jean Charles in a cramped trailer located behind the original family home, which was destroyed by Hurricane Gustav eight years ago.² The water that surrounds Isle de Jean Charles brings both prosperity and peril to this community. Many residents depend on it for their livelihood, but rising water levels render the island uninhabitable.³ Flooding often covers the only road to the island.⁴ Mrs. Parfait constantly worries that she will lack access to medical care if she falls ill as a result of her lupus.⁵ She worries that her children will miss yet another day of school when the school bus cannot access the island.⁶ While abandoning her home will be difficult, Mrs. Parfait is ready to leave for the sake of her family.⁷

Leaving is not a simple solution for Mrs. Parfait or any of the other Isle de Jean Charles residents. Many of the current residents cannot afford to move.⁸ Even if they could afford to do so, the residents are deeply attached to the land.⁹ These residents are members of the Biloxi-Chitimacha-Choctaw tribe and have lived on Isle de Jean Charles for generations.¹⁰ Over the years, individual families have moved away from the island.¹¹ Absent a more cohesive strategy for their exit, the unique lifestyle of the remaining residents will be lost.

To preserve the culture and traditions of the Isle de Jean Charles residents, the people must move to a safer location.¹² There are several mechanisms to accomplish this task including relocation, forced relocation,

Copyright 2017, by MADALINE KING.

1. Coral Davenport & Campbell Robertson, *Resettling the First American 'Climate Refugees'*, N.Y. TIMES, May 3, 2016, <https://perma.cc/ZF2D-2EJW>.

2. *Id.*

3. See Carolyn Van Houten, *The First Official Climate Refugees in the U.S. Race Against Time*, NAT'L GEOGRAPHIC, May 25, 2016, <https://perma.cc/A9CV-JTC9>.

4. Davenport & Robertson, *supra* note 1.

5. *Id.*

6. *Id.*

7. *Id.*

8. Van Houten, *supra* note 3.

9. Davenport & Robertson, *supra* note 1.

10. Van Houten, *supra* note 3.

11. *Id.*

12. *Id.*

and incentivized voluntary resettlement. Relocation is voluntary but destroys any semblance of community the residents once had.¹³ Forced relocation is involuntary and leads to resentment of the government by residents and potential constitutional violations.¹⁴ Incentivized voluntary resettlement, which is generally preferred,¹⁵ is a strategic concept that moves an entire community by providing incentives for the residents.¹⁶

Louisiana won a \$92 million grant through the National Disaster Resilience Competition for the Louisiana Strategic Adaptations for Future Environments Program (LA SAFE), the state's plan to prepare for future natural disasters.¹⁷ A portion of this grant will be used to resettle the residents of Isle de Jean Charles.¹⁸ Nevertheless, resettlement is an incredibly difficult task to undertake. A community like the one living on Isle de Jean Charles, with strong social and cultural bonds, as well as a self-sufficient relationship to its land,¹⁹ makes the task overwhelming. The resettlement aspect of LA SAFE presents several issues. What difficulties will the state face in implementing a resettlement strategy? Can the state compel forced relocation? If the state cannot compel such a process, how can the state facilitate the success of the chosen resettlement mechanism? What effects will these relocation options have on the residents of Isle de Jean Charles?

The current resettlement strategy envisioned by LA SAFE is meant to be community-led and voluntary.²⁰ However, there is a question as to whether the state can implement forced relocation once the danger of complete land loss becomes inevitable. Implementing an involuntary process, through the exercise of eminent domain or a disaster declaration, is improper. Instead, Louisiana should facilitate the success of a voluntary resettlement program by creating incentives for the residents of Isle de Jean Charles.

13. See discussion *infra* Part I.A.

14. See discussion *infra* Part II.

15. CHRISTOPHER DALBOM ET AL., COMMUNITY RESETTLEMENT PROSPECTS IN SOUTHEAST LOUISIANA: A MULTIDISCIPLINARY EXPLORATION OF LEGAL, CULTURAL, AND DEMOGRAPHIC ASPECTS OF MOVING INDIVIDUALS AND COMMUNITIES 4 (2014).

16. See discussion *infra* Part I.A.

17. Press Release, U.S. Dep't of Hous. & Urb. Dev., HUD Awards \$1 Billion through National Disaster Resilience Competition (Jan. 21, 2016) (on file with author).

18. *Id.*

19. Davenport & Robertson, *supra* note 1.

20. LA. OFF. OF CMTY. DEV. DISASTER RECOVERY UNIT, LOUISIANA'S STRATEGIC ADAPTATIONS FOR FUTURE ENVIRONMENTS 15 (2016), <https://perma.cc/R5ZK-CTU5> [hereinafter STRATEGIC ADAPTATIONS].

This comment focuses on answering some of the questions posed by the resettlement of the Isle de Jean Charles residents. Part I notes the differences between resettlement and relocation and outlines the difficulties associated with resettlement. This part also explores past resettlement attempts. Lastly, Part I profiles the residents of Isle de Jean Charles and analyzes the unique issues that arise in their resettlement. Part II addresses the reality that some residents will likely refuse to leave. This part considers the question of whether the federal or state governments can force these residents to leave by evaluating the exercise of eminent domain and the power afforded to governments during disaster declarations. Part II concludes that forced relocation is improper. Part III discusses the importance of developing a successful model of incentivized voluntary resettlement and reviews an ideal resettlement scenario as envisioned by the residents of Isle de Jean Charles. This comment concludes with suggestions of incentives that may be utilized to ensure that the resettlement of Isle de Jean Charles is successful – most importantly, that the community be allowed to assist in developing their resettlement plan.

BACKGROUND

The state of Louisiana is disappearing. Since 1932, Louisiana has lost over 1,800 square miles of coastal wetlands.²¹ One study estimates that Louisiana loses the equivalent of a football field of land every hour.²² Future estimates do not look much better. An additional 1,750 square miles of land are at risk of being lost in the next fifty years alone.²³ As Louisiana's coastline erodes without intervention, the state will continue to experience natural disasters that will lead to even more extensive damage.²⁴

Extreme weather events, including storms like Hurricanes Katrina and Rita, worsen coastal erosion.²⁵ Dredging for oil and gas pipelines shifts the soil, contributing to coastal land destruction.²⁶ Rising sea levels, induced by climate change, intensify the problem by allowing saltwater intrusion into the wetlands.²⁷ Climate change is caused by burning fossil fuels for

21. Mark Schleifstein, *Louisiana is Losing a Football Field of Wetlands an Hour*, New U.S. Geological Survey Study Says, NOLA, June 2, 2011, <https://perma.cc/9ZVA-NY8B>.

22. *Id.*

23. COASTAL PROT. & RESTORATION AUTH., LOUISIANA'S COMPREHENSIVE MASTER PLAN FOR A SUSTAINABLE COAST (2012), <https://perma.cc/QMK9-JLZN>.

24. *Id.*

25. Schleifstein, *supra* note 21.

26. Van Houten, *supra* note 3.

27. While the existence and cause of climate change is a hotly debated topic among scholars, politicians, and others, the focus of this comment is not to engage

energy, which emits carbon dioxide and other greenhouse gases into the atmosphere.²⁸ While much of the international scientific community now acknowledges that the climate is changing, there has been no significant legal discussion regarding the inevitable displacement of the people affected.²⁹ The resettlement of Isle de Jean Charles residents will serve as a model the international community may look to when determining how to best protect people and the land they live on.

In Louisiana, protecting the coastline means protecting the unique culture and traditions of more than two million residents,³⁰ the habitats of a plethora of wildlife, and the national economy. Louisiana's ports are responsible for oil and gas, waterborne commerce, commercial fisheries landings, and millions of tons of cargo.³¹ Disruption at these ports could lead to increases in gasoline and natural gas prices, as well as other huge monetary losses to the national economy.³² It is imperative that Louisiana is proactive in protecting its coast.

In January of 2016, the United States Department of Housing and Urban Development announced the winners of the National Disaster Resilience Competition (NDRC).³³ The NDRC is a competition that provides \$1 billion in funding for communities that were impacted by natural disasters in 2011, 2012, or 2013.³⁴ The competition promotes "risk assessment and planning and will fund the implementation of innovative

in that debate. Instead, this comment seeks to highlight the issues Louisiana faces as a result of coastal erosion, which some believe is worsened by climate change. Devin Lowell, *Ensuring Consistency: Louisiana Coastal Restoration Through the Lens of the RAM Terminal and the Mid-Barataria Sediment Diversion*, 27 TUL. ENVTL. L.J. 299, 302 (2014); *The Cost of Doing Nothing*, WATERMARKS (La. Coastal Wetlands Conservation & Restoration Task Force, New Orleans, La.), Summer 1999, at 5, <https://perma.cc/53ES-624N>. See also *Climate Change in Coastal Communities*, U.S. ENVTL. PROT. AGENCY, <https://perma.cc/U6SE-ZH4G> (last updated June 1, 2017) (climate change resulting in sea level rise).

28. Carey DeGenaro, *Looking Inward: Domestic Policy for Climate Change Refugees in the United States and Beyond*, 86 U. COLO. L. REV. 991, 993 (2015). See also LISA V. ALEXANDER ET AL., *Summary for Policymakers*, in CLIMATE CHANGE 2013: THE PHYSICAL SCIENCE BASIS 3, 15 (2013), <https://perma.cc/GG3Y-XJRK> (human activity contributing to an increase in greenhouse gases); Maxine Burkett, *Just Solutions to Climate Change: A Climate Justice Proposal for a Domestic Clean Development Mechanism*, 56 BUFF. L. REV. 169, 175 (2008).

29. DeGenaro, *supra* note 28, at 994.

30. STRATEGIC ADAPTATIONS, *supra* note 20, at 3.

31. *Id.*

32. *Id.*

33. Press Release, *supra* note 17.

34. The National Disaster Resilience Competition was one year long and included two phases. The first phase involved risk assessment and planning, while the second involved design and implementation. *National Disaster Resilience Competition*, U.S. DEP'T OF HOUS. & URB. DEV., <https://perma.cc/USL9-423D>.

resilience projects to better prepare communities for future storms and other extreme events.”³⁵ Louisiana was one of thirteen states, cities, and counties selected as a winner.³⁶

Louisiana was the recipient of \$92,629,249 to implement the Louisiana Strategic Adaptations for Future Environments Program.³⁷ LA SAFE was designed to supplement the 2012 Coastal Master Plan (CMP),³⁸ a project undertaken by the Coastal Protection and Restoration Authority (CPRA).³⁹ The CMP is a plan for a safe and sustainable coastline generated to confront Louisiana’s devastating loss of wetlands.⁴⁰ The plan includes a comprehensive scheme that addresses protection, conservation, enhancement, and restoration of the coastal area through innovative coastal protection projects.⁴¹ The CMP is a \$50 million venture that will take place over the course of fifty years.⁴² In developing the CMP, Louisiana engaged in extensive scientific research; researchers analyzed project propositions by forecasting their effects on the coast during the fifty year time period.⁴³ The CMP is updated every five years, and the 2017 plan became effective on June 2, 2017.⁴⁴

The CPRA assisted the Office of Community Development in applying for the competition in which Louisiana was awarded funding for LA SAFE.⁴⁵ These agencies will work together to make the plan a reality.⁴⁶ In early 2017, initial planning took place in six parishes, including Terrebonne Parish,⁴⁷ where Isle de Jean Charles is located.

LA SAFE complements the CMP by applying a three-pronged approach that divides Louisiana into three zones based on flood projections in a 100-year storm event.⁴⁸ Such a storm occurs once every 100 years and is the

35. *Id.*

36. Press Release, *supra* note 17.

37. *Id.*

38. STRATEGIC ADAPTATIONS, *supra* note 20, at 4.

39. *Id.* at 3.

40. Kelley R. Dick, Jr., *The Fight for the Coast: Is Suit Against the Oil Industry Part of the “Master Plan?”*, 41 S.U. L. Rev. 237, 245 (2014).

41. LA. REV. STAT. § 49:214.5.2(A)(2) (2016).

42. Gerald J. Pels & Julia C. Rinne, *The RESTORE Act: Legislation that Works for the Gulf Coast*, NAT. RESOURCES & ENV’T, Spring 2013, at 42.

43. *Id.*

44. COASTAL PROT. & RESTORATION AUTH., *supra* note 23, at 30; COASTAL PROT. & RESTORATION AUTH., LOUISIANA’S COMPREHENSIVE MASTER PLAN FOR A SUSTAINABLE COAST (2017), <https://perma.cc/93PP-TXM6>.

45. COASTAL PROT. & RESTORATION AUTH., *supra* note 23, at 52.

46. *Id.* at 138.

47. The Terrebonne Parish session was March 28, 2017. *LA SAFE Announces Initial Planning Session Dates*, LA SAFE (Mar. 15, 2017), <https://perma.cc/XQB4-J6X9>.

48. See STRATEGIC ADAPTATIONS, *supra* note 20, at 6.

most severe storm characteristic of that region.⁴⁹ Factors that contribute to a 100-year storm include pressure index, wind speed, the radius of maximum winds, and forward-moving speed of the storm.⁵⁰

The three zones that LA SAFE details are reshape, retrofit, and resettle.⁵¹ First, the reshape zone is characterized by areas projected to experience less than three feet of flood inundation in a 100-year storm event occurring fifty years from now.⁵² LA SAFE's goal is to utilize these underdeveloped areas for population and economic growth.⁵³ Second, the retrofit zone is made up of areas projected to experience between three and fourteen feet of flood inundation in a 100-year storm event occurring fifty years from now.⁵⁴ The strategy for these areas is to promote structural and non-structural protection through levees, floodgates, land use planning, and more.⁵⁵ Third, the resettlement zone is an area projected to experience over fourteen feet of flood inundation in a 100-year storm event occurring fifty years from now.⁵⁶ LA SAFE intends to remove residents from these vulnerable geographies,⁵⁷ including the community of Isle de Jean Charles, which is located in this zone.⁵⁸

Unfortunately, some land simply cannot be saved, and that is a harsh reality Louisiana must face.⁵⁹ To prepare for this consequence of coastal erosion, LA SAFE envisions a resettlement procedure that is cognizant of cultural and social bonds.⁶⁰ A \$48 million⁶¹ portion of the NDRC grant will be used to resettle the residents of Isle de Jean Charles, an area in southeastern Louisiana that experienced a ninety-eight percent loss of land over the last fifty years.⁶² Although previous resettlement efforts produced mixed results,⁶³ resettlement of a coastal community caused by rising sea levels has never been attempted in the continental United States.⁶⁴

49. Laura J. Steinberg, *Making Good Project Design Choices: Critical Decisions Contributing to the Failure of the New Orleans Hurricane Protection System*, 52 LOY. L. REV. 1267, 1270-71 (2006).

50. *Id.*

51. STRATEGIC ADAPTATIONS, *supra* note 20, at 6.

52. *Id.*

53. *Id.* at 8.

54. *Id.* at 6.

55. *Id.* at 1.

56. *Id.* at 6.

57. *Id.* at 5.

58. Press Release, *supra* note 17.

59. STRATEGIC ADAPTATIONS, *supra* note 20, at 13.

60. *Id.*

61. Davenport & Robertson, *supra* note 1.

62. Press Release, *supra* note 17.

63. See discussion *infra* Part I.C.

64. LOWLANDER CENTER, RESETTLEMENT AS A RESILIENCE STRATEGY AND THE CASE OF ISLE DE JEAN CHARLES 4 (2015), <https://perma.cc/H5QP-QGQ8>.

I. THE CONCEPT OF RESETTLEMENT

There are critical differences between the concepts of “resettlement” and “relocation.” While resettlement is often preferred over relocation, there are inherent difficulties associated with resettlement, as showcased by past efforts. These difficulties are amplified by the unique issues that arise in the planned resettlement of the residents of Isle de Jean Charles.

A. An Issue of Labeling

The differences between relocation and resettlement clarify why one concept is preferred over the other. Although the terms are often used interchangeably, each concept is distinct.⁶⁵ Relocation is essentially the ad hoc migration of people.⁶⁶ Resettlement is the permanent or long-term movement of a community from one site to another.⁶⁷

Relocation may be voluntary or forced, and it refers to individual or single-family movement.⁶⁸ It looks attractive when there are environmental threats with potentially severe consequences, and measures that would allow for significant protection are limited in efficacy, safety, and feasibility.⁶⁹ Relocation also looks attractive when there is a substantial monetary cost associated with a better option.⁷⁰ Thus, it is often the default mechanism for leaving a threatened area.⁷¹ However, relocation destroys any semblance of community the residents once had.⁷² Such movement is connected to a loss of identity.⁷³ Although residents lose their homes, an even bigger price is paid: the loss of social, cultural, and religious aspects of the community.⁷⁴ Unfortunately, relocation due to environmental hazards has already occurred in Louisiana.⁷⁵

65. Jane McAdam, *Relocation and Resettlement from Colonisation to Climate Change: The Perennial Solution to ‘Danger Zones’*, 3 LONDON REV. INT’L L. 93, 93 n.1 (2015).

66. STRATEGIC ADAPTATIONS, *supra* note 20, at 14.

67. McAdam, *supra* note 65.

68. DALBOM ET AL., *supra* note 15, at 5.

69. *Id.* at 45.

70. *Id.*

71. *Id.* at 4.

72. *See id.*

73. *See* Benoit Mayer, *The International Legal Challenges of Climate-Induced Migration: Proposal for an International Legal Framework*, 22 COLO. J. INT’L ENVTL L. AND POL’Y 357, 373 (2011).

74. Ali Vancleef, *Hydropower Development and Involuntary Displacement: Toward a Global Solution*, 23 IND. J. GLOBAL LEG. STUD. 349, 353 (2016).

75. DALBOM ET AL., *supra* note 15.

In contrast, resettlement is a concentrated, organized effort to ensure communities relocate together as a unit, so the concept is generally preferred.⁷⁶ Communities have “distinctive, proud, and valued cultural histories,” and residents often have strong ties to an area.⁷⁷ During resettlement, the essential characteristics of the original community, such as its social structures, legal and political systems, culture, and worldviews, are preserved.⁷⁸ Collective movement, as opposed to relocation, may diminish damage to the social network.⁷⁹ The community maintains its unity in a form that is similar to the original community.⁸⁰

B. Difficulties Associated with Resettlement

History demonstrates that resettlement and relocation efforts are not typically successful.⁸¹ There are numerous reasons why these efforts have largely been failures.

Often, the main issue is the depletion of federal or local funds.⁸² Funding is either unreliable or unsustainable,⁸³ and in some cases, funding is supplied by an act of Congress that is later repealed.⁸⁴ For instance, the resettlement of the village of Newtok, Alaska failed when it was left without federal funds after a congressional act was repealed.⁸⁵ Lack of funds leaves large-scale projects unfinished and forces the local government or community leaders to obtain funding from another source.⁸⁶

Unsustainable federal or local support may lead to failure. Implementing a resettlement plan requires continued government support throughout the duration of the project.⁸⁷ When lawmakers learn of the dire reality that residents face, they may not believe the future land loss predictions,⁸⁸ leading to a decline in initially obtained government support. Another issue is lack of support by the residents. Poor management of the resettlement process

76. *Id.*

77. *Id.*

78. McAdam, *supra* note 65.

79. Mayer, *supra* note 73, at 392.

80. McAdam, *supra* note 65.

81. DALBOM ET AL., *supra* note 15, at 3.

82. *Id.*

83. *Id.*

84. *Id.* at 12.

85. *Id.*

86. *Id.*

87. *Id.* at 3.

88. Alana Semuels, *The Village that will be Swept Away*, THE ATLANTIC, Aug. 30, 2015, <https://perma.cc/MF7Q-5J47>.

further frustrates the effort.⁸⁹ Resettlement is a huge undertaking, so organization is key.

Most resettlement and relocation efforts consist of “decades of broken promises, poor communication, and outright malfeasance by public officials.”⁹⁰ Unorganized relocation of certain populations has already occurred in southeast Louisiana.⁹¹ These issues are attributed to failed government intervention and lead to an “inherent distrust of government programs.”⁹²

Neighbors near the new community may be unwilling to accept the resettled residents. Unfortunately, Isle de Jean residents have already faced this problem. While contemplating a resettlement of Isle de Jean Charles in 2008, following Hurricane Gustav, a surrounding community prevented sale of property in the chosen resettlement site to the residents.⁹³

A more nuanced issue with resettlement is the term that is used to describe residents. Although the media often calls Isle de Jean Charles residents “climate refugees,”⁹⁴ there is no uniform label for them. The term “refugee” has negative connotations, and legal and social consequences may stem from the label affixed to resettled residents.⁹⁵ In fact, critics have even gone so far as to call the term racist.⁹⁶ Labeling the residents of Isle de Jean Charles in another way may alleviate these concerns.

Isle de Jean Charles residents should be identified as “internally displaced persons.”⁹⁷ The United Nations defines internally displaced persons as those who are “forced or obliged to flee or to leave their homes . . . in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”⁹⁸

89. DALBOM ET AL., *supra* note 15, at 18.

90. *Id.*

91. See LOWLANDER CENTER, *supra* note 64, at 3.

92. DALBOM ET AL., *supra* note 15, at 3.

93. Amy Wold, *Isle de Jean Charles Tribe Looks at Moving Entire Community North in First of its Kind Test Case*, THE ADVOCATE, Apr. 12, 2016, http://www.theadvocate.com/baton_rouge/news/article_da3cfd6f-7e69-57c9-a040-5262767a3ba2.html; Elke Weesjes Sabella, *Third Time is a Charm?: The Lowlander Center and the Resettlement of Isle de Jean Charles*, UNIV. OF COLO. NAT. HAZARDS CTR. (Apr. 27, 2016), <https://perma.cc/4DS3-VYR8>.

94. Davenport & Robertson, *supra* note 1; Van Houten, *supra* note 3.

95. Hon. Cynthia Diane Stephens & Jerome Reide, *Katrina “Survivors” versus “Internally Displaced Persons”: More than Mere Semantics*, HUMAN RIGHTS MAGAZINE, Fall 2006, <https://perma.cc/R5F4-3VNJ>.

96. *Id.*

97. *Id.*

98. U.N. High Comm’r for Refugees, Off. for the Coordination of Humanitarian Aff., *Guiding Principles on Internal Displacement*, at 1, U.N. DOC. E/CN.4/1998/53/Add.2 (Sept. 2004) [hereinafter *Guiding Principles*].

Further, Isle de Jean Charles residents do not meet the definition of a refugee under the United Nations Convention Relating to the Status of Refugees (Refugee Convention).⁹⁹ The Refugee Convention is “the key instrument in international law for the protection of refugees” and sets out the prerequisites for qualification as a refugee.¹⁰⁰ A refugee is defined as a person who is unable or unwilling to return to his home country for fear of persecution due to race, religion, or politics.¹⁰¹

Mislabeling Isle de Jean Charles residents as “refugees” could lead to negative consequences, but a proper label could help ease the transition into the area where their new community will be located.

C. Previous Attempts at Resettlement

Despite a myriad of issues, the concept of resettlement is not new; there have been efforts to move entire communities before. However, resettlement of this nature has not been attempted. “The Isle de Jean Charles resettlement plan is one of the first programs of its kind in the world, a test of how to respond to climate change in the most dramatic circumstances without tearing communities apart.”¹⁰²

1. Unsuccessful Resettlement Attempts

A recent example of an unsuccessful attempt at resettlement is Newtok, Alaska.¹⁰³ Newtok is a village on Alaska’s west coast that is rapidly sinking into the Bering Sea.¹⁰⁴ The Army Corps of Engineers (Corps) approved a project to resettle the residents of Newtok,¹⁰⁵ but it was estimated to cost over \$130 million.¹⁰⁶ The Corps would not fund the entire project, leaving the village responsible for obtaining the remaining funds to complete the resettlement.¹⁰⁷ Further, state officials were not involved in the effort and essentially left the resettlement up to the community.¹⁰⁸ This led to the

99. U.N. High Comm’r for Refugees, *Convention and Protocol Relating to the Status of Refugees*, at 14 (July 28, 1951).

100. Lauren Michelle Ramos, *A New Standard for Evaluating Claims of Economic Persecution under the 1951 Convention Relating to the Status of Refugees*, 44 VAND. J. TRANSNAT’L L. 499, 503 (2011).

101. *See Guiding Principles*, *supra* note 98.

102. Davenport & Robertson, *supra* note 1.

103. *See* Semuels, *supra* note 88.

104. *See id.*

105. DALBOM ET AL., *supra* note 15, at 12.

106. Semuels, *supra* note 88.

107. *Id.*

108. *See id.*

dissolution of support from Newtok residents.¹⁰⁹ Thus, lack of funds and support by the government led to the demise of this resettlement project.

Another unfortunate example of a failed resettlement effort is St. Malo, Louisiana.¹¹⁰ St. Malo was a community of Filipino fisherman in St. Bernard Parish, Louisiana.¹¹¹ It was destroyed by a hurricane in 1915 when modern disaster management did not exist.¹¹² Since no state or federal system was available, “the responsibility for the persistence or relocation of the community lay entirely within the social networks of the residents.”¹¹³ As a result, residents relocated individually and integrated into different communities.¹¹⁴ Unsustainable federal and local support, accompanied by poor management of the resettlement process led to the unorganized relocation and loss of the community.

2. Successful Resettlements

Although the history of resettlement attempts largely consists of failed endeavors, there are a few success stories. Allenville, Arizona was a historically black community that was all but destroyed by severe flooding after major storm events in 1978.¹¹⁵ The entire community was able to resettle in Hopeville, an area located outside the 100-year floodplain.¹¹⁶ The success of the Allenville resettlement is likely the result of an efficient system in which both the federal and state governments were involved. Through the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the land was purchased by the state of Arizona then transferred to Allenville residents in exchange for property in Hopeville.¹¹⁷ Once this process was complete, the federal government reimbursed the state.¹¹⁸

The resettlement of Valmeyer, Illinois represents another successful venture.¹¹⁹ Valmeyer was a town affected by catastrophic flooding in the Mississippi River Valley during the Great Flood of 1993.¹²⁰ The Hazard Mitigation and Relocation Assistance Act increased federal funding for

109. DALBOM ET AL., *supra* note 15, at 13.

110. *Id.* at 18.

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.* at 7.

116. *Id.* at 7-8.

117. *Id.* at 8.

118. *Id.*

119. John McCormick, *Now on Higher Ground, Ex-River Town Thriving*, CHICAGO TRIBUNE, July 7, 2003, <https://perma.cc/DR7B-LRME>.

120. *Id.*

relocations, and the funds were intended to be used for individual buyouts.¹²¹ However, the town of Valmeyer took advantage of this opportunity to resettle its entire community.¹²² The success of the Valmeyer resettlement is the result of sustained local support. While federal funding was available, the town utilized loans and private money to “cover what the government did not.”¹²³ Following the flooding, residents voted to move the entire town out of the Mississippi River floodplain.¹²⁴ Only a small number of families chose to remain in the flooded area.¹²⁵ Although some Valmeyer residents chose to move elsewhere before the new town site was selected, the population recovered and actually increased.¹²⁶ The short distance of one mile from the original site to the new site also contributed to Valmeyer’s success.¹²⁷

Some resettlement efforts have been successful, but resettlement of a coastal community facing rising sea levels and devastating storm inundation has never occurred in the lower forty-eight states.¹²⁸ Additionally, these successful resettlement initiatives were in response to disasters rather than proactive approaches to worsening coastal conditions, as is contemplated in the resettlement of Isle de Jean Charles.

D. Isle de Jean Charles and the Biloxi-Chitimacha-Choctaw Tribe

Resettlement is the only option the residents of Isle de Jean Charles have. The island faces more than potential threats of flooding. Complete land loss seems inevitable, as the area has already experienced a ninety-eight percent loss of land.¹²⁹ The island shrunk from a 22,400-acre area in 1955 to a mere 320 acres today.¹³⁰ While inherent difficulties are associated with any resettlement process, the resettlement of these particular residents presents unique problems.

Isle de Jean Charles residents have already experienced failed attempts at resettlement. In 2002, the Army Corps of Engineers developed a plan to construct a levee as part of the Morganza to the Gulf Hurricane Protection

121. DALBOM ET AL., *supra* note 15, at 8.

122. See McCormick, *supra* note 119.

123. DALBOM ET AL., *supra* note 15, at 9.

124. McCormick, *supra* note 119.

125. *Id.*

126. *Id.*

127. *Id.*

128. LOWLANDER CENTER, *supra* note 64.

129. Press Release, *supra* note 17.

130. Van Houten, *supra* note 3.

Project.¹³¹ Isle de Jean Charles would be left outside of the levee's protection due to the cost.¹³² The Corps propositioned a resettlement of the island's residents, but some of the residents refused to leave, so the Corps did not pursue further attempts.¹³³ Resettlement efforts occurred again in 2008 after Hurricane Gustav destroyed many homes,¹³⁴ but the community surrounding the resettlement site was able to prevent the sale of property to the residents.¹³⁵ Because of the resistance from neighbors in the new community, that attempt was a failure as well.¹³⁶

Members of the Biloxi-Chitimacha-Choctaw tribe believe that several families first settled on the island in the early 1800s.¹³⁷ The Native American tribe lived on this land in a self-sufficient manner for generations, working as fishermen, oystermen, and trappers.¹³⁸ This resettlement is not just an issue of personal safety; it is an issue of "longevity of culture and traditions."¹³⁹ It is critical because it will help prevent the demise of the Biloxi-Chitimacha-Choctaw tribe's culture.¹⁴⁰ Many of the residents have already scattered.¹⁴¹ At one time, the island was home to around 300 people, but only about sixty still reside there.¹⁴² As a result, the tribe has not been able to hold a powwow¹⁴³ in over ten years.¹⁴⁴ Absent a resettlement strategy, relocation will take place family by family,¹⁴⁵ effectively destroying the tribe's chances of preserving its traditions.

II. IMPLEMENTATION OF FORCED RELOCATION

As the situation in Isle de Jean Charles becomes increasingly dire, there is a question of whether the federal or state government can force the

131. *Gulf Coast Biloxi-Chitimacha-Choctaw Indians: Rising Tides*, INST. FOR TRIBAL ENVTL. PROF'L CLIMATE CHANGE PROGRAM (2008), <https://perma.cc/J3GV-3AXM> [hereinafter *Biloxi-Chitimacha-Choctaw Indians*].

132. *Id.*

133. *Id.*

134. Wold, *supra* note 93.

135. Sabella, *supra* note 93.

136. *Id.*

137. *Our History*, ISLE DE JEAN CHARLES, LOUISIANA, <https://perma.cc/6ADS-8PPE> (last visited Aug. 29, 2017).

138. *Id.*

139. Van Houten, *supra* note 3.

140. *Id.*

141. *Id.*

142. *Id.*

143. A powwow is "a social gathering of Native Americans that usually includes dancing." *Powwow*, MERRIAM-WEBSTER, <https://perma.cc/4FMR-CE6Q> (last visited Jan. 22, 2017).

144. Van Houten, *supra* note 3.

145. STRATEGIC ADAPTATIONS, *supra* note 20, at 14.

residents to leave. Forced relocation could potentially be accomplished through eminent domain or even a disaster declaration. However, such an involuntary approach is improper.

A. The Reality that Some Residents May Refuse to Leave

There are some residents that will likely refuse to leave Isle de Jean Charles as resettlement efforts develop. Prior resettlement attempts failed due to a reluctance to leave,¹⁴⁶ and some residents have already expressed their desire to stay.¹⁴⁷ After living on the island for generations, the residents are deeply attached to the land.¹⁴⁸ One island native, Edison Dardar, constructed signs proclaiming his refusal to leave.¹⁴⁹ Dardar is sixty-six years old and has lived on Isle de Jean Charles his entire life.¹⁵⁰ He declared, “Ain’t nobody I talk to that wants to move.”¹⁵¹

B. Eminent Domain

The federal government may take private property for public use without the owner’s consent through eminent domain.¹⁵² If the government chooses to do so, it must also provide just compensation to the private property owner.¹⁵³ This authority is provided in the Takings Clause of the Fifth Amendment of the Constitution.¹⁵⁴ State governments also have this authority.¹⁵⁵ The Supreme Court of the United States utilizes a test to determine whether the purported public use is sufficient to warrant a particular taking.¹⁵⁶ The test considers “whether or not the condemnation of land will serve a public purpose.”¹⁵⁷ Public purposes may include

146. *Biloxi-Chitimacha-Choctaw Indians*, *supra* note 131.

147. Tristan Baurick, *Houma Sugar Farms are Finalists for Isle de Jean Charles Resettlement*, NOLA, July 20, 2017, http://www.nola.com/environment/index.ssf/2017/07/houma_sugar_plantations_eyed_f.html.

148. Davenport & Robertson, *supra* note 1.

149. *Id.*

150. *Id.*

151. *Id.*

152. Alberto B. Lopez, *Weighing and Reweighing Eminent Domain’s Political Philosophies Post-Kelo*, 41 WAKE FOREST L. REV. 237, 237-38 (2006).

153. *Id.* at 238.

154. U.S. CONST. amend. V; see David Schultz, *Economic Development and Eminent Domain After Kelo: Property Rights and “Public Use” Under State Constitutions*, 11 ALB. L. ENVTL. OUTLOOK 41, 45 (2006).

155. *Id.* at 45-46.

156. Stellina Napolitano, *Proactive Natural Disaster Recovery and Resilience in the Northeast: Should Governments Exercise Buyout Programs and, if Necessary, Eminent Domain, to Prevent Disaster?*, 33 PACE ENVTL. L. REV. 325, 340 (2016).

157. *Id.*

building bridges, paving highways, or improving land.¹⁵⁸ To regulate the use of eminent domain, many states incorporate the power into their legislation or constitutions, and the regulations tend to be stricter than federal law requires.¹⁵⁹ This allows the state to determine which public uses are sufficient to warrant exercise of the power.¹⁶⁰ States are often hesitant to exercise eminent domain due to a fear that political consequences will stem from the citizens' view that the government is abusing its power.¹⁶¹

Perhaps eminent domain should be used as a tool for resiliency purposes.¹⁶² Federal or state governments could exercise this power to provide safety to known dangerous waterfronts.¹⁶³ Offering just compensation and ensuring that governments do not abuse their power would allow people to be more accepting of the policy and eventually recognize the benefits that could be provided.¹⁶⁴ Absent full public acceptance, the exercise of eminent domain could be used as leverage to negotiate with landowners.¹⁶⁵

However, it is difficult to meet the requirements set out by the Supreme Court in taking the land of Isle de Jean Charles and forcing the residents to relocate. While the state may be able to satisfy the just compensation requirement through use of the NDRC grant, finding a "public purpose" sufficient to warrant the exercise of eminent domain is questionable. Governments traditionally exercise eminent domain for public purposes including building bridges, paving highways, or improving the land.¹⁶⁶ Eminent domain has also been used to stimulate the economy, improve resource access, provide for public safety, and enhance environmental cleanup.¹⁶⁷ The exercise of eminent domain in the context of Isle de Jean Charles is difficult to justify by traditional means, as the land is bound to wash away.¹⁶⁸

Further, use of eminent domain as leverage is a risky proposition. Isle de Jean Charles residents and other coastal communities in southeast Louisiana are already hesitant to trust government programs.¹⁶⁹ Using the eminent domain process as leverage could be seen as a threat and may discourage residents from actively participating in the resettlement process.

158. *Id.* at 346.

159. *See Kelo v. City of New London*, 54 U.S. 469, 489 (2005) (citations omitted).

160. Napolitano, *supra* note 156.

161. *Id.*; *see Lopez, supra* note 152, at 240.

162. Napolitano, *supra* note 156, at 347.

163. *Id.*

164. *Id.*

165. *Id.* at 340.

166. Napolitano, *supra* note 156, at 346.

167. *Id.*

168. Press Release, *supra* note 17.

169. DALBOM ET AL., *supra* note 15, at 3.

C. Disaster Declarations

Governments reserve certain powers in the wake of natural disasters.¹⁷⁰ The Robert T. Stafford Disaster Relief and Emergency Act of 1988 (Stafford Act) provides federal assistance to state and local governments in response to natural disasters and states of emergency.¹⁷¹ The Stafford Act sets out the procedure of declaring an emergency, governs the interactions between the federal and state or local governments, and provides the general rights of the government in these emergencies.¹⁷² Furthermore, the Stafford Act affords immunity to government officials while performing their discretionary duties.¹⁷³

In the past, citizens have been forcibly removed from their homes when refusing to voluntarily evacuate in the wake of disaster.¹⁷⁴ Prior to Hurricane Katrina's landfall, Mayor Ray Nagin, Jr. ordered a mandatory evacuation of the city of New Orleans.¹⁷⁵ He then authorized law enforcement personnel to forcibly remove remaining residents from their homes if they refused to leave peacefully.¹⁷⁶ Justifications for this action include keeping citizens safe from disease, enabling cleanup efforts, maintaining order, and protecting human lives.¹⁷⁷

Arguably, the dire conditions Isle de Jean Charles residents face are comparable to those following a disaster. The only road in and out of the island is often flooded, even on cloudless days.¹⁷⁸ When a storm is approaching, there is only a "small window of time" in which residents must decide whether to evacuate.¹⁷⁹ Otherwise, they must stay on the island during the storm,¹⁸⁰ effectively disconnecting residents from valuable resources and placing them in an extremely dangerous situation. Further, the conditions will only continue to worsen. Complete land loss seems inevitable;¹⁸¹ eventually, there will be no way to access the island without a boat.¹⁸² More homes will be destroyed as storms continue to

170. Jonathan Jorissen, *Katrina's House: The Constitutionality of the Forced Removal of Citizens from their Homes in the Wake of Natural Disasters*, 5 AVE MARIA L. REV. 587, 589 (2007).

171. See 42 U.S.C. § 5121(b) (1988).

172. Jorissen, *supra* note 170, at 591.

173. *Id.*

174. *Id.* at 587.

175. *Id.*

176. *Id.*

177. *Id.* at 604.

178. Van Houten, *supra* note 3.

179. *Id.*

180. *Id.*

181. Press Release, *supra* note 17.

182. See Van Houten, *supra* note 3.

pound the island.¹⁸³ Protecting human lives is a major concern of the federal and state governments.¹⁸⁴ As a result, the Governor of Louisiana could declare a state of emergency under the Stafford Act,¹⁸⁵ use his power to order mandatory evacuations, then forcibly remove citizens from their homes if they refuse to leave voluntarily.

However, drawing an analogy between a natural disaster and coastal erosion that has occurred over the course of the last fifty years is a stretch. Mandatory evacuations and forced removal of citizens present a host of issues, including potential procedural due process violations under the Civil Rights Act¹⁸⁶ and substantive due process violations under the Fourth Amendment.¹⁸⁷ Such coerced movement also tends to result in human rights violations.¹⁸⁸ Further, international law generally forbids forced relocation.¹⁸⁹ Even if the state were to order a mandatory evacuation, the move is only meant to be temporary. Delaying the return of residents is reasonable when addressing major safety concerns, such as downed power lines and nonfunctioning traffic signals, or to ensure that emergency search and rescue operations may take place effectively.¹⁹⁰ Permanent return may be delayed until restoration of basic utilities occurs.¹⁹¹ In those instances, however, the notion of residents returning to their homes is inherent. Moreover, mandatory evacuations, and especially forced removal, would further erode the already diminishing trust Isle de Jean Charles residents have in the federal and state governments.¹⁹²

Whether the government chooses to implement a forced relocation through the exercise of eminent domain or by declaring a state of emergency, involuntary approaches to relocation are not viable. Issues of meeting jurisprudential tests, violating individual rights, and compromising the trust of Isle de Jean Charles residents render involuntary approaches improper. Even if these approaches may be considered proper in some instances, they are unlikely to garner public support and create a truly successful mechanism for resettlement.

183. *Id.*

184. Jorissen, *supra* note 170.

185. 42 U.S.C. § 5121 (1988).

186. 42 U.S.C. § 1983 (2016); Jorissen, *supra* note 170, at 599.

187. U.S. CONST. amend. IV; Jorissen, *supra* note 170, at 600.

188. Maria Stavropoulou, *The Right Not to be Displaced*, 9 AM. U.J. INT'L L. & POL'Y 689, 705 (1994). "[V]iolations [may] involve the right to personal security, the right to food, or the right to sustainable development"

189. *See id.* at 718, 724.

190. Lisa Grow Sun, *Disaster Mythology and the Law*, 96 CORNELL L. REV. 1131, 1184 (2011).

191. *Id.* at 1185.

192. DALBOM ET AL., *supra* note 15, at 3.

III. FACILITATING THE SUCCESS OF RESETTLEMENT

Forced relocation of Isle de Jean Charles is improper, so Louisiana should take certain steps to facilitate the success of the tribe's move through an incentivized voluntary resettlement. The residents of Isle de Jean Charles have their own vision of a successful community, and their interests should be considered when developing a strategic plan. A viable resettlement plan is critical because a model is needed for other communities that face similar problems. Thus, incentives are proposed to ensure Isle de Jean Charles residents are involved in, and ultimately embrace, the resettlement process.

A. The Importance of a Successful Resettlement

Protecting Louisiana's coast is critical in preserving the lifestyles of coastal residents, the habitats of unique wildlife, and the state and national economies. Over two million residents live in the coastal region.¹⁹³ As the coast disappears, so does the residents' lively culture. Wetland ecosystems suffer devastating damage due to coastal erosion.¹⁹⁴ Salt water from the Gulf of Mexico intrudes into Louisiana's marshes causing freshwater organic life to die off.¹⁹⁵

Louisiana's coast is also vital to the state and national economies. The seafood industry is responsible for \$1.8 billion in state revenue and supports more than 32,000 jobs.¹⁹⁶ The coast handles 90% of the United States' outer continental oil and gas, 20% of the annual waterborne commerce, and 26% of the commercial fisheries landings.¹⁹⁷ The state sees 500 million tons of cargo pass through its ports each year.¹⁹⁸ In 2014, five Louisiana ports ranked in the top twelve leading ports in the United States with the Port of South Louisiana ranked first and the Port of New Orleans ranked seventh.¹⁹⁹ Another Louisiana port, Port Fourchon, is the only port in the nation that is capable of unloading Ultra Large or Very Large Crude Carriers that deliver oil from abroad.²⁰⁰ A three week disruption at this port would lead to a 16.6% increase in gasoline prices, an 11.4% increase in natural gas prices,

193. STRATEGIC ADAPTATIONS, *supra* note 20, at 3.

194. Dick, *supra* note 40, at 240.

195. *Id.*

196. *Id.* at 242.

197. STRATEGIC ADAPTATIONS, *supra* note 20, at 3.

198. *Id.*

199. U.S. ARMY CORPS. OF ENG'R, THE U.S. WATERWAY SYSTEM TRANSPORTATION FACTS AND INFORMATION (2015), <https://perma.cc/TAM8-P9VH>.

200. STRATEGIC ADAPTATIONS, *supra* note 20, at 3.

and would cost the national economy \$11.2 billion in sales, \$3.1 billion in earnings, and 65,000 jobs.²⁰¹

Developing a viable resettlement plan is a priority for two reasons: to protect what is left of Louisiana's coastline and to create a model for other communities that will face similar problems. As sea levels rise around the world, coastal communities will encounter comparable land loss issues.²⁰² There is an "urgent need to establish working models to assist in resettling coastal communities while maintaining their cultural integrity."²⁰³ Louisiana, and Isle de Jean Charles in particular, is in a unique position to serve as a "laboratory and a leader in risk-oriented community development that can be replicated and transferred throughout the world."²⁰⁴

B. A Successful Resettlement in the Eyes of Isle de Jean Charles Residents

Any community that is resettled will have its own vision of what a successful outcome looks like. The Lowlander Center, a group formed to assist coastal communities with the challenges they face,²⁰⁵ has worked with the Isle de Jean Charles community to produce an ideal resettlement scenario.²⁰⁶ The residents envision a sustainable community that utilizes groundbreaking technology and resilience measures while integrating the history, traditions, and culture of the Biloxi-Chitimacha-Choctaw tribe.²⁰⁷

The Lowlander Center's concept embodies the tribe's selection of a plant, the saw palmetto, as a symbol for the new community.²⁰⁸ The palmetto was selected as a symbol for its sturdiness and very long life,²⁰⁹ the same values Isle de Jean Charles residents hope resettlement will foster in their tribe and new community. The community will include 100 single-family homes located in close proximity to each other.²¹⁰ There are more homes than required to house the remaining residents, a result of Chief Albert Naquin's hope of reuniting the tribe by convincing those members

201. *Id.*

202. Jeremy Kelley, *Climate Change and Small Island States: Adrift in a Raising Sea of Legal Uncertainty*, 11 SUSTAINABLE DEV. L. & POL'Y 56, 56 (2011).

203. LOWLANDER CENTER, *supra* note 64, at 12.

204. STRATEGIC ADAPTATIONS, *supra* note 20, at 6.

205. LOWLANDER CENTER, *supra* note 64, at 13.

206. *Id.* at 12.

207. *Id.*

208. LOWLANDER CENTER, *supra* note 64, at 20. A saw palmetto is "any of several shrubby palms chiefly of the southern U.S. and West Indies that have spiny-toothed petioles." *Saw palmetto*, MERRIAM-WEBSTER, <https://perma.cc/UV9W-NCV4> (last visited July 18, 2017).

209. LOWLANDER CENTER, *supra* note 64, at 21.

210. *Id.* at 18.

who previously moved from the island to rejoin the community.²¹¹ A community center will be built that serves as the equivalent of a traditional gathering place.²¹² These structures will be aligned so as to replicate a palmetto with branches radiating from a single point in a fan-like fashion.²¹³ The community center will serve as the branch end with the homes radiating outward.²¹⁴ Family gardens, water management technology, and strategic tree planting will ensure water is treated as a “resource rather than a problem.”²¹⁵ Community parks and play areas will offer recreation and enjoyment while assisting in storm water detention.²¹⁶ There will be a forest and water features that allow for crawfish ponds and migratory bird sanctuaries.²¹⁷

One hundred million dollars in funding is required to implement the plan created by the Lowlander Center.²¹⁸ However, the NDRC grant will provide only \$48 million.²¹⁹ The Lowlander Center intends to raise the remaining funds through supporting commitments, government and foundation grants, loans, and tax credits.²²⁰

C. Incentivized Voluntary Resettlement

Although some residents will likely refuse to leave Isle de Jean Charles, Louisiana must motivate residents to ensure maximum participation in the incentivized voluntary resettlement process. While the exact resettlement envisioned by the Lowlander Center may not come to fruition, certain essential incentives will encourage residents to participate in the process nonetheless.

Most importantly, the Isle de Jean Charles community must assist in developing the resettlement plan. There must be “direct and frequent engagement of community members in all aspects of the process.”²²¹ Residents should play a major role in decision-making regarding where the resettlement site will be located, what resources the new community will have access to, when the first phases will begin, and how the plan will unfold. Island residents should create a committee to work directly with

211. Tegan Wenland, *Relocating Coastal Tribe Indicates Future Challenges to Louisiana*, WWNO, Sept. 8, 2016, <https://perma.cc/3KSH-GWX4>.

212. LOWLANDER CENTER, *supra* note 64, at 16.

213. *Id.* at 20.

214. *Id.*

215. *Id.* at 16.

216. *Id.*

217. *Id.* at 20.

218. Wenland, *supra* note 211.

219. Davenport & Robertson, *supra* note 1.

220. LOWLANDER CENTER, *supra* note 64, at 30.

221. *Id.* at 8.

the planning body that is responsible for conveying their neighbors' concerns. The planning body should hold monthly planning sessions in which the entire community is invited to weigh in on decisions. Community leaders have already worked with the Lowlander Center to produce a resettlement strategy,²²² so the planning body should take those efforts, along with surveys conducted by the state,²²³ into account while developing a final resettlement plan.

State officials should resettle the Isle de Jean Charles residents in a safer and more viable location that is still as close as feasibly possible to the island. This ensures residents are able to enjoy their relationship with the land for as long as it exists.²²⁴ By moving a community a short distance from the original location, the residents are able to retain their traditions and cultural practices, and some of the resistance to resettlement may be thwarted.²²⁵ The residents have expressed a preference for a rural site in Terrebonne Parish with access to schools, doctors, grocery stores, and other services.²²⁶ Options include sugar farms that are situated on higher ground and located closer to the city of Houma.²²⁷

Affordable housing should be available to the residents of Isle de Jean Charles. Native American populations located in small rural communities, especially those south of Houma, are particularly vulnerable to the effects of coastal erosion.²²⁸ Many of the current residents simply cannot afford to move away from Isle de Jean Charles.²²⁹ While the resettlement of Valmeyer, Illinois was largely a success,²³⁰ it did take time to facilitate the process. Valmeyer did not achieve its original population for several years, and this may be attributed to a lack of affordable housing for modest and lower income residents.²³¹

The Isle de Jean Charles community should be resettled in an area with industries that the residents were formerly employed in. Many of the island's residents are fishermen or work on supply boats.²³² One of the

222. *Id.* at 12.

223. Baurick, *supra* note 147.

224. LOWLANDER CENTER, *supra* note 64, at 16.

225. *Id.* at 16, 6.

226. Baurick, *supra* note 147.

227. *Id.*

228. DALBOM ET AL., *supra* note 15, at 34.

229. Van Houten, *supra* note 3.

230. See discussion *supra* Part I.C.

231. LOWLANDER CENTER, *supra* note 64, at 6. One resident expressed her unhappiness with the process of purchasing a new home. Barbara Kendall, fifty-five years old, stated, "I won't be able to retire when I want to." McCormick, *supra* note 119.

232. Darren Simon, *Tribal Chief on Isle de Jean Charles Says it's Time to Leave*, NOLA, Sept. 21, 2008, <https://perma.cc/X4RM-5U84>.

island's residents, Edison Dardar, expressed his concern with finding work, saying "I'm a fisherman and I lived all my life here . . . I don't know nothing about no other work or anything like that."²³³ There is a substantial risk of losing wage employment in displacements, and an individual's ability to commute to work affects his desire to resettle.²³⁴ If the residents cannot resettle in a location where these industries already exist, then the new community should be near employment opportunities. The prospect of relocating businesses may operate as an incentive as well.²³⁵ Business owners will likely be amenable to the notion of resettling their families if they are able to reestablish their businesses too.

Finally, there should be a system of effective management of the entire resettlement process to ensure the government, its agencies, planning bodies, other key players, and the residents themselves are a part of every step of the process. Terrebonne Parish, the receiving parish, and the planning bodies should be partners.²³⁶ Planning efforts must be continuously reviewed to ensure the resettlement is proceeding as efficiently as possible.²³⁷ Those in charge of allocating funds from the grant should be held accountable. Such accountability will produce a well-organized system and create a relationship of trust between the Isle de Jean Charles residents and the local, state, and federal governments, which is crucial in ensuring maximum participation in the resettlement process.

Following these suggestions will promote a successful incentivized voluntary resettlement process that the Isle de Jean Charles residents are involved in and are happy to embrace.

CONCLUSION

The Isle de Jean Charles community faces the inevitable destruction of the island they call home, but their resettlement presents unique challenges. While the strategy envisioned by the Louisiana Strategic Adaptations for Future Environments Program is meant to be community-led and voluntary, there is a question of whether the state can implement forced relocation once the danger of complete land loss becomes unavoidable. Although the state reserves the power to exercise eminent domain or declare a state of emergency, such involuntary approaches are improper. Thus, Louisiana must facilitate success by implementing an incentivized voluntary resettlement process for Isle de Jean Charles. Mrs.

233. Wenland, *supra* note 211.

234. DALBOM ET AL., *supra* note 15, at 25-26.

235. *Id.* at 26.

236. LOWLANDER CENTER, *supra* note 64, at 3.

237. *Id.* at 10.

Parfait and other residents deserve a chance to prosper in a community where their culture and traditions will not wash away with the land.

*Madaline King**

* J.D./D.C.L., 2018, Paul M. Hebert Law Center, Louisiana State University. The author extends her gratitude to Professor John Church for his guidance and encouragement while writing this article. Additionally, the author sincerely appreciates the extraordinary dedication of the Volume VI Editorial Board during the production process. Lastly, the author is thankful for the endless support of her family and friends.

